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SCOTUS on MD&A: “Pure Omissions” Not Actionable Under Rule 10b-5

The Supreme Court speaks on MD&A! Last Friday, SCOTUS delivered an opinion that addressed MD&A - in ***Macquarie Infrastructure Corp. v. Moab Partners, L.P.*** – that dealt with whether an investor could rely on a failure to disclose a "known trend or uncertainty" in accordance with MD&A as a basis to state a Rule 10b-5 claim.

The 11-page opinion - penned by Justice Sotomayor - unanimously held that "pure omissions" are not actionable under Rule 10b–5(b). The opinion differentiates a pure omission (failure to address a topic entirely) from a "half truth" (omission of a material fact necessary to make statements made, in light of the circumstances under which they were made, not misleading).

The analysis in the opinion differentiated the language of Exchange Act Section 10(b) and Rule 10b-5(b) from liability imposed under Section 11(a) of the Securities Act, which prohibits a registration statement from omitting "to state a material fact required to be stated therein." This prohibition on pure omissions is absent from Section 10(b) and Rule 10b-5(b).

The Second Circuit decision was vacated and the case remanded for further proceedings.

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